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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,469	12/08/2003	Heribert Lorenz	101216-38	2884
27387	7590	12/15/2004		
NORRIS, MCLAUGHLIN & MARCUS, P.A. 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/730,469

Applicant(s)

LORENZ ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 2 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Margaret Emsmann
MARGARET ESMANN
PRINCIPAL EXAMINER
GROUP 1100

Art Unit: 1751

Continuation of 5. does NOT place the application in condition for allowance because:

With respect to the rejection based upon Audousset et al. (US' 087) in view of Rose et al. (US' 699), Applicant argues that Audousset et al. does not teach the applicant's invention wherein all 3 compounds are required in a single composition.

The examiner respectfully disagrees with the above argument because Audousset et al. as a primary reference clearly teaches that the dyeing composition comprises at least one para/or ortho oxidation dye precursor and especially preferred embodiment consists at least one paraphenylenediamine (see col. 5, lines 15-25) and 3-chloro-4-aminophenol (see 3, line 55). Audousset et al. further, teaches that the composition can also contain other couplers customarily used in the dyeing compositions for keratinous fiber, especially for hair (see col. 5, lines 28-30). Therefore, there is a sufficient motivation to one having ordinary skill in the art to use to incorporate more than one para oxidation precursor such as para-phenylenediamine and 3-chloro-para-aminophenol in the hair dyeing composition. Rose et al. as a secondary reference in the analogous art of hair dyeing formulation, teaches 3-morpholinophenol (see col. 9, line 68) which is a coupler that customarily used in the dyeing compositions for keratinous fiber. Therefore, there is a motivation to combine the references, and, thus, the prima facie case of obviousness has been established.

With respect to the argument that Audousset et al. (US' 087) teaches a hair dyeing composition comprising benzimidazole derivative which is not required in the claimed invention.

The examiner would like to point out that, the open language of the claim "comprising" allowed a person of ordinary skill in the art to add more dyeing ingredients in the dyeing composition.